



**Department of Planning and Economic Development**  
 Staff Report to the Zoning Board of Appeals

January 29, 2020

**47347 Dequindre Rd. Front Yard Setback Variance**

<b>REQUEST</b>	A front yard setback variance of 9.97 feet from <i>Section 138-5.100</i> to allow the existing dwelling to be located 15.03 feet from the new right-of-way
<b>APPLICANT</b>	Road Commission for Oakland County (RCOC) 32255 Northwestern Hwy., Suite 225 Farmington Hills, MI 48334
<b>LOCATION</b>	47347 Dequindre, located on the west side of Dequindre, north of Auburn Rd.
<b>FILE NO.</b>	20-002
<b>PARCEL NO.</b>	15-25-479-053
<b>ZONING</b>	R-4 One Family Residential
<b>STAFF</b>	Kristen Kapelanski, Manager of Planning

**Requested Variance**

The Road Commission for Oakland County, as applicant, is requesting a variance from the Code of Ordinances to permit an existing building to be located 15.03 feet from the new right-of-way (ROW) resulting from the ongoing Dequindre Road improvements. *Section 138-5.100 (Schedule of Regulations)* requires a minimum front yard setback of 25 feet in the R-4 One Family Residential District as measured from the proposed ROW, thus requiring a variance request of 9.97 feet. In February and November 2019, the RCOC issued a Declaration of Taking condemning a portion of the subject parcel needed to complete road improvements to Dequindre Road, and the requested front yard setback is the result of the acquisition of right-of-way for Dequindre Road.

In addition and as provided for in State Law, the Road Commission is permitted to seek a variance to render the property "in compliance" if action by an agency (Road Commission) results in a property being non-compliant. As you are aware, the ZBA granted a similar variance for property on Dequindre last month with respect to Dequindre improvements, and the Road Commission has obtained variances for other roads in the City for the same circumstances, including Tienken and Livernois. The Road Commission has indicated there will likely be two and possibly three additional requests related to the Dequindre Road work but staff has not received additional applications at this time. Refer to the provided communication from City Attorney Staran on the previous Dequindre variance request for general information related to road right-of-way variances.

**Site Description**

The subject site is located one parcel south of the southwest corner of Clovelly and Dequindre, north of Auburn. Below is a table for the zoning and existing and future land use designations for the site and surrounding parcels.

	Zoning	Existing Land Use	Future Land Use
<b>Subject Site</b>	<b>R-4 One Family Residential</b>	<b>Residential Home</b>	<b>Residential 2.5</b>
North	R-4 One Family Residential	Single family homes	Residential 2.5
South	R-4 One Family Residential	Single family homes	Residential 2.5
East (Shelby)	R-1-C One Family Residential	Single family homes	Moderate Density Res.
West	R-4 One Family Residential	Single Family Homes	Residential 2.5

## Site Photographs



## Analysis

In the case of a dimensional variance, the Zoning Ordinance requires the ZBA to make a finding that a practical difficulty exists that precludes the property owner from meeting the requirements of the Ordinance. *Section 138-2.407.B.* provides criteria for determining if a practical difficulty exists. Please refer to the ZBA application for the applicant's responses to the following criteria.

1. *Compliance with the strict letter of the restrictions governing area, setback, frontage, bulk, height, lot coverage, density or other dimensional or construction standards will unreasonably prevent the owner from using the property for a permitted purpose or will render conformity with such restrictions unnecessarily burdensome.* Compliance with the requirements of the ordinance would not prevent the owner from using the property but could be a major obstacle should the property owner seek re-financing or wish to sell the property if left noncompliant. The City responds to numerous requests from lending institutions requesting the City to confirm that an existing parcel and structure is compliant with Zoning. In this case, the improvements to Dequindre Rd. by the Road Commission have resulted in a property being noncompliant. This variance will render the property in conformance.
2. *A grant of the variance will do substantial justice to the applicant as well as to other property owners in the district, and a lesser variance will not give substantial relief to the applicant as well as be more consistent with justice to other property owners in the zoning district.* The variance request is necessary to render the structure compliant. As stated, the result of the structure becoming noncompliant was due to the actions of the Road Commission, which states that a lesser variance is not available because of the dimensions required for the Highway Easement.
3. *The plight of the applicant is due to the unique circumstances of the property.* The variance is unique in that it is required because of actions by the RCOC to make a public road improvement to improve safety along Dequindre Rd.
4. *The problem is not self-created.* See 1. and 3. above; the problem is not self-created as the change in proposed ROW was dictated by RCOC for the benefit of the public welfare and due to the improvement of Dequindre, which is necessitating the variance.

5. *The spirit of this ordinance will be observed, public safety and welfare secured, and substantial justice done.* If the variance is granted, it is staff's opinion that substantial justice will be done, the spirit of the ordinance will be observed, public safety and welfare will be preserved (and enhanced), and no adverse effects will result on any adjacent properties. Without the variance, the structure and lot would be rendered non-conforming.

## Sample Motions

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### **Motion to Approve**

**MOTION** by \_\_\_\_\_, seconded by \_\_\_\_\_, in the matter of File No. 20-002, that the request for a variance of 9.97 feet from *Section 138-5.100* of the Rochester Hills Code of Ordinances to allow an existing building to be located 15.03 feet from the proposed right-of-way, for 47347 Dequindre Road, Parcel Identification Number 15-25-479-053 be **APPROVED** because a practical difficulty does exist on the property as demonstrated in the record of proceedings and based on the following findings. With this variance, the property shall be considered by the City to be in conformity with the Zoning Ordinance for all future uses with respect to the front yard setback for which this variance is granted.

1. The Zoning Board of Appeals finds that the public benefits associated with the Dequindre Road improvement project are significant and merit the granting of this variance as referenced by MCL 213.54 (2), the Uniform Condemnation Procedures Act.
2. Compliance with the strict letter of the Zoning Ordinance would prohibit the reasonable use of the property as has been previously enjoyed and will be unnecessarily burdensome based on the recent improvements completed by the Road Commission for Oakland County (RCOC) on Dequindre Rd.
3. Granting the variance will preserve a substantial property right for the applicant as has been previously enjoyed by this property owner and thus substantial justice shall be done.
4. A lesser variance will not provide substantial relief, and would not be more consistent with justice to other property owners in the area.
5. There are unique circumstances of the property that necessitate granting the variance as described in finding 1. above, and that distinguish the subject property from other properties elsewhere in the City with respect to compliance with the ordinance regulations.
6. The problem is not self-created by the property owner as the change in ROW was dictated by RCOC.
7. The granting of this variance would not be materially detrimental to the public welfare or existing or future neighboring uses.
8. Approval of the requested variance will not impair the supply of light and air to adjacent properties, increase congestion, increase the danger of fire, or impair established property values in the surrounding area.

### **Motion to Deny**

**MOTION** by \_\_\_\_\_, seconded by \_\_\_\_\_, in the matter of File No. 20-002, that the request for a variance of 9.97 feet from *Section 138-5.100* of the Rochester Hills Code of Ordinances to allow an existing building to be located 15.03 feet from the proposed right-of-way, for 47347 Dequindre Road, Parcel Identification Number 15-25-479-053 be **DENIED** because a practical difficulty does not exist on the property as demonstrated in the record of proceedings and based on the following findings:

1. Compliance with the strict letter of the restrictions of the Zoning Ordinance will not prevent the owner from using the property for a permitted purpose in a reasonable manner without encroaching into the required front yard setback, and no practical difficulty has been demonstrated for this property.

2. Granting the variance will not do substantial justice to nearby property owners as it would confer a special benefit on the applicant that is not enjoyed by other property owners in the vicinity.
3. There are no unique circumstances of the property have been identified by the applicant that necessitate granting the variance.
4. The granting of the variance would be materially detrimental to the public welfare by establishing a precedent that could be cited to support similarly unwarranted variances in the future. The granting of this variance could encourage further incursions upon the Zoning Ordinance which would result in further variances being considered by the Zoning Board of Appeals and could be construed as removing the responsibility of meeting the Zoning Ordinance from applicants.